IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9817 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMNATH MARETHIA REGIONAL MANAGER

Versus

SHASHIN H BHAVSAR

Appearance:

1. Criminal Misc.Application No. 9817 of 2001

MR MITUL K SHELAT for Petitioners No. 1-3

MR MJ BUDDHBHATTI for Respondent No. 1

Mr V M Pancholi, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/03/2002

ORAL JUDGEMENT

The three petitioners herein have preferred this

psetition under section 482 of the Code of Criminal Procedure, 1973 for quashing a private complaint filed by the respondent, herein, against them before the learned Metropolitan Magistrate, Court No.2 at Ahmedabad City which was registered against the petitioners as criminal case No.1173/2001 for an offence punishable under sections 406, 420 and 114 of IPC. The facts of the case of respondent no.1 as complainant before the said Court may be briefly stated as follows:

The said complainant, respondent no.1 herein, has alleged that petitioners no.1 and 2, the original accused in the said criminal case, are the responsible officers of United India Insurance Company Ltd., whereas, petitioner no. 3 is a doctor who conducted inquiry into the claims of the complaint. It is also alleged that one Shri Pritamlal Shah used to meet the original complainant very often in the court as Agent of the said Insurance Company. That the said Pritamlal Shah had given some details about Mediclaim policy of the said Insurance Company to the complainant and, therefore, the complainant had agreed to take mediclaim policy and accordingly the complainant had paid premium of different amounts and had taken different policies for himself, for his wife and for his two children for the year 2000 A.D. That even for the next year i.e. 2001 similar mediclaim insurance policies were obtained on payment of due amount of premium and the policy numbers have been given in the complaint at page 29.

2. The complainant has thereafter alleged that on 18.9.2001, the wife of the complainant, Sumaben was admitted to Anand Hospital, opposite Cancer Hospital, Asarwa. That sonography test was undertaken by Dr.Jagdish Patel and it was noticed that Sumaben was suffering from Appendicitis. That therefore, blood test were undertaken and medicines were also given to Sumaben and thereafter, she was operated upon. That she had to remain as indoor patient in the said hospital upto 24.9.2001. That after her discharge from the said hospital, a bill of Rs.17,549-49 was given by the said hospital to the petitioner for the said treatment, operation, medicine etc. That the complainant submitted all the bills to the said Insurance Company.

3. That thereafter the panel doctor of the said Insurance Company, Dr.Bimal Goswami, petitioner no.3 herein, who has been shown as accused no.4 in the original complaint, had come for enquiry of the said mediclaim of Sumaben. That Sumaben was asked to write on a blank paper as per the say of the said Doctor and

accordingly it was written in the said blank paper by Sumaben that she had pain in abdomen since one and half years and for the said purpose. That the complainant objected to that statement and sonography report dated 27.1.2000 was also shown. That it did not show existence of appendicitis or any ailment. That despite the said position, the said Doctor said that it was merely a formality and had gone away. That thereafter, the said Doctor had approached the family doctor of the complainant Dr. Viresh Patel and obtained a wrong certificate from the said Doctor on 24.10.2001. That thereafter the complainant came to know that the said Insurance Company had rejected the mediclaim of the complainant stating that Sumaben was previously suffering from the said decease and therefore, the mediclaim could not be sanctioned. The complainant has alleged that everything was done illegally and with an intention to see that the Insurance Company may not be required to pay the amount of mediclaim to the complainant and, therefore, the aforesaid petitioners have committed the aforesaid offence of criminal misappropriation and cheating against Sumaben and the complainant. On the aforesaid set of facts, the aforesaid complaint was filed on 27.11.2000 by the complainant and the learned Magistrate had passed an order for issuance of summons for the offences punishable under sections 406 and 420 read with section 114 of IPC against the petitioners and original accused No.1. Feeling aggrieved by the aforesaid order of the learned Magistrate, the petitioners-original accused persons have preferred this application before this Court under section 482 of the said Code. It has been mainly contended here that even a bare reading of the averments made in the complaint, it is clear that no offence whatsoever has been made out against the present petitioners. That there was no case of cheating since there was no inducement and that the complainant has not been deceived by the present peititoners and thus no offence has been made out. The learned Magistrate could not have issued summons against the present petitioners. That therefore, the said order of the learned Magistrate is illegal. The petitioners have, therefore, preferred this petition for quashing the said complaint.

4. Notice was issued at the first instance and rule was issued thereafter. On service of rule, Mr M J Buddhbhatti, learned Advocate has appeared for respondent No.1-original complainant whereas, Mr V M Pancholi, learned APP appeared for the State. I have heard the learned Advocates for the parties and have perused the papers.

5. Learned Advocate for the petitioner-original accused persons has heavily attacked on the complaint stating that the complaint has been filed without any verification of facts by the complainant, who happens to be a practising Advocate of Ahmedabad. It has been argued that accused no.1-Adikeshavan is no more and yet the complaint has been filed against the said accused no.1. That therefore, the complaint has been filed without verification of facts. This is after all a matter within the special knowledge of the accused persons. Therefore, the above point will not be of much help to the present petitioners.

6. It has then been argued by the learned Advocate for the petitioners that so far as the offence of criminal misappropriation is concerned, the complaint does not disclose the said offence since there is no entrustment of property which has been misappropriated with dishonest intention by the petitioners.

7. At this stage, learned Advocate for respondent no.1, original complainant, has conceded that there is no offence punishable under section 406 of IPC made out in the complaint and there is no entrustment and criminal misappropriation in respect thereof and, therefore, the said offence has not been made out. In that view of the matter, it is not necessary to discuss the matter with respect to the said offence.

8. So far as the offence punishable under section 420 of IPC is concerned, learned Advocate for the petitioner has argued the matter at length that there is no element of inducement or cheating. That there is no allegation that Sumaben was deceived with a view to deliver some property to the Insurance Company or somebody else and therefore, no offence of cheating has also been made out on a bare look at the averments of the complaint. At this stage, Mr Buddhbhatti, learned Advocate appearing for the original complainant has stated that there is no question of inducement since the present petitioners had no contact with the complainant or Sumaben and, therefore, it cannot be said that the present petitioners have induced Sumaben or the complainant for parting with the amount of premium. However, Mr Buddhbhatti, learned Advocate has further argued that for the purpose of constituting an offence of cheating under section 420 of IPC, it is necessary to have ingredients of dishonest inducement. With a view to appreciate the point, it would be necessary to refer to section 415 of IPC which is as under:

"415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

On a perusal of section 415 of IPC, it is very clear that an offence of cheating can be said to have been made out provided the complainant proves the following factual aspects:

When an accused person,

(a) By deceiving any person,
(b) fraudulently or dishonestly induces the person so deceived,
(c) to deliver any property to any person,
(d) or to consent that any person shall retain any property,
(e) or intentionally induces the person so deceived to do,
(f) or to omit to do anything which he would not do or omit if he were not so deceived,
(g) and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to "cheat".

9. In my reading of section 415 of IPC, it is clear that dishonest inducement is an essential ingredient for constituting an offence of cheating under section 415 of IPC which would be punishable under section 420 of IPC. Looking to the averments made in the complaint, it is clear that it is not even averred or alleged by the complainant that the present petitioners had dishonestly induced the complainant or his wife Sumaben or that the complainant or Sumaben had parted with the amount of premium to the Insurance Company on such alleged inducement. In that view of the matter, when there is no element of dishonest inducement, offence of cheating cannot be said to have been made out.

10. Another aspect of the case is that with a view to constitute offence under section 415 of IPC, the complainant or somebody else must have been deceived. In

the present case, it is not possible to agree with Mr Buddhbhatti that the complainant or Sumaben was deceived by the present petitioners. In fact, it is not the case of the original complainant or Sumaben that the complainant or Sumaben had met the three officers of the Insurance Company and they had deceived the complainant or Sumaben and/or that they had induced the complainant or Sumaben for parting with the amount of premium. On the contrary, the records show that the family doctor of the complainant had certified that Sumaben was under treatment of Dr. Patel about two years before the date of the certificate i.e. 11.10.2001 at page 27 and that Sumaben had abdominal pain and she was suffering from acute appendicitis. This means that Sumaben was suffering from acute appendicitis since about 1999 and the Insurance policy was taken thereafter. This would mean that on the date on which the insurance policy was taken, Sumaben was already suffering from the said disease. The contract of insurance has been placed at page 14. Para 41 thereof clearly indicates that if the disease was pre-existing at the time of proposing the insurance, then the said amount would not be reimbursible. Therefore, the petitioners have refused to reimburse the amount of expenditure by invoking the aforesaid terms and conditions of the contract. In that view of the matter, on the one hand it is not a case of dishonest inducement, on the other, the complainant and Sumaben have not been deceived for parting with the amount of premium and thirdly, the Insurance Company officers and the Insurance Company have made enquiry from the family physician of the complainant himself and have obtained materials to show that the aforesaid ailment existed on the date of the contract. On the aforesaid enquiry the officers have found that the complainant and Sumaben were not entitled to mediclaim. In that view of the matter, it cannot be said that the petitioners have cheated the complainant or Sumaben in any manner whatsoever.

11. Mr Buddhbhatti, learned Advocate has relied upon a decision in the case of State of U.P. v. Joti Prasad, reported in AIR 1961 Allahabad 582 wherein it has been observed that a fraudulent representation within the meaning of section 420 of IPC may be made directly or indirectly. A fraudulent representation got made through a person acting as an agent for the accused amounts to fraudulent representation by and on behalf of the accused. There is no dispute with respect to the same. Here it has been agreed that there is no element of inducement at all. Therefore, this decision will not help the complainant to any extent. When it is agreed

that there was no inducement, there could not be dishonest inducement.

11.1. Similarly, in the case of Javerchand Chawla v. State of A.P. also it is made clear that cheating would be constituted if the loanee had fraudulently and dishonestly induced his creditor to advance loan by making false representation. This would clearly mean fraudulent and dishonest inducement is an essential ingredient for constituting an offence of cheating which is absent here in the case on hand.

11.2. In the case of Rajesh Bajaj v. State NCT of Delhi & Ors, reported in 1999 (1) Crimes 136 (SC), it has been laid down that simply because there is commercial transaction, it cannot be treated to be a reason for not holding it to be an offence of cheating. On the other hand, in the case of Alpic Finance Ltd. v. P. Sadasivan, reported in AIR 2001 SC 1226, it has been observed that the main offence alleged was that respondent Trust running Dental College have cheated the appellant, a non-banking financial institution and dishonestly induced him to deliver property. However, there was no allegation that the respondent made false representation and no allegation was made that there was fraud or inducement. There is further observation that no element of misappropriation or cheating was made out and quashing of proceedings was held to be legal and proper. The above decisions also say that fraudulent or dishonest inducement is an essential ingredient which is missing in the present case for constituting an offence of cheating.

11.3. Then we can consider another decision in the case of S.W. Palanitkar v. State of Bihar reported in (2000) 1 SCC 241. There it has been laid down that for the purpose of constituting an offence of cheating under section 420 of IPC, the intention indicated in section 415 of IPC must be shown "to exist" at the time of making of inducement. It is further observed that otherwise mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. This would mean that at the initial stage of contract, there must be an element of dishonest inducement, and if it is not so, no offence of cheating can be said to have been made out. In the present case, it is found that the element of dishonest or fraudulent inducement is totally absent and the complainant has not made any averment in the present complaint. In that view of the matter, no offence of cheating has been made out.

12. It would therefore, be clear that so far as the offence punishable under section 406 of IPC is concerned, it has been conceded by the learned Advocate for respondent no.1 that the said offence has not been made out, on a bare reading of the complaint. So far as the offence punishable under section 420 of IPC is concerned, it is also not made out having regard to the facts of the case. In fact, when there is no inducement at the initial stage, it cannot be said that the offence of cheating has been constituted. Even on a bare reading of the complaint itself it is very clear that both the offences alleged in the complaint have not been prima facie constituted. Then it is not necessary for the accused persons to face trial before the trial court. Suffice it to say that even prima facie, no offence has been constituted and made out against the petitioner and, therefore, the complaint is required to be quashed in exercise of powers under section 482 of the Criminal Procedure Code, 1973.

13. Learned advocate for the original complainant has argued that the powers conferred by section 482 of the Cr.P.C. should be rarely exercised. There is no difficulty in accepting the said argument. However, this is a case found to be fit for exercising such powers. The second argument of Mr Buddhbhatti is that only the allegations made in the complaint should be looked into and defence of the accused cannot be considered at this stage. There is no difficulty in accepting the said argument also. However, as said above, so far as section 406 of IPC is concerned, Mr Buddhbhatti himself has agreed that the said offence has not been made out on a bare reading of the complaint. So far as the offence of cheating is concerned, he has agreed that there is no inducement in the present case. He was of the view that inducement is not an essential ingredient for constituting the said offence. In the present case, it is found that there is no averment of inducement, much less fraudulent inducement. When inducement is not there, then fraudulent inducement can also be not be there. Therefore, in absence of required ingredients for constituting the offence of cheating as laid down in section 415 of IPC, no offence of cheating has been made out. It is, therefore, clear on a bare reading of the complaint, that the offences alleged, have not been constituted and made out and, therefore, this is a fit case to exercise powers conferred under section 482 of the Criminal Procedure Code, 1973.

14. For the foregoing reasons, this petition is allowed. The complaint being Criminal Case No.1173/2001

pending before the learned Metropolitan Magistrate, Court No.2, Ahmedabad City is ordered to be quashed and set aside. Rule is made absolute to the aforesaid extent.

16.3.2002 [D P Buch, J.]
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